IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WA.No. 562 of 2007()

AGAINST THE JUDGEMENT IN WPC.32546/2005 Dated 16/01/2007
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APPELLANT: PETITIONER

DR.AJAYIKUMAR BABU.T.K.,
TUTOR (SURGERY), GOVERNMENT HOMEOPATHIC
MEDICAL COLLEGE, KOZHIKODE.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS:
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1. STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT, GENERAL ADMINISTRATION
DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE SECRETARY TO GOVERNMENT,
P & AD DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

3. THE SECRETARY TO GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 02/03/2007, THE COURT ON 7/3/2007 DELIVERED THE
FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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W.A.No.562 of 2007
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Dated this the 7th day of March, 2007.

JUDGMENT

Antony Dominic,J.

1. The appellant, the petitioner in the writ petition, had filed the writ petition praying for quashing Ext.P15 and to declare that the respondents are bound to ensure that one post of Professor reserved in Ext.P6, is restored by upgradation of the post of Tutor (Surgery), enabling him to hold the post of Professor. He also sought a direction requiring the respondents to upgrade the post held by him as Professor (Surgery). The writ petition, having been dismissed by the Learned Single Judge, this appeal is filed.

2. The facts necessary for appreciating the contentions are that according to the appellant as per the Homoeopathy (Minimum Standards of Education) Regulations 1983, framed by the Central Council for Homeopathy, the minimum teaching staff required for Degree course, is 13 posts of Professors and this includes one post of Professor in Surgery. It is stated that by Ext.P6 Government Order dated 22.08.1990, sanction was accorded for the recategorisation of one post of Professor and one post of Assistant Professor reserved for special recruitment of Scheduled Castes/Scheduled Tribes in the Gazetted Cadre of the Homoeopathic Medical College, Kozhikkode as Tutor under the Terms and Conditions laid down in Ext.P1 Government Order. A perusal of Ext.P6 Government Order reveals that one post of Assistant Professor and one post of Professor in the Homeopathic Medical College, Kozhikkode were reserved for special recruitment and that though the Public Service Commission notified the vacancies twice, no suitable candidate could be selected for

appointment. It was therefore that the proposal was made by the Health and Family Welfare Department, which ultimately resulted in the recategorisation as mentioned above.

3. After review of the staff position and adequacy of representation of the reserved categories as on 01.01.1992, the Government issued Ext.P7 order dated 08.10.1992 reserving one post of Tutor in the Gazetted Cadre of the Homeopathic Medical College, Trivandrum for special recruitment. Thereafter, by Ext.P8 Government Order dated 06.03.1993, it was ordered that one of the posts of Tutors vacant in the Department of Practice of Medicine consequent, be shifted to the Department of Surgery as there was no open vacancy in the Department of Surgery to resort to special recruitment.

4. In pursuance to Exts.P7 and P8, the Principal of the Medical College took steps to fill up the post and it is seen that there was no list of Kerala Public Service Commission available and henced candidates sponsored by the Employment Exchange were interviewed and a rank list was prepared. Among them, 6 persons were appointed as Tutors and the appellant, a candidate belonging to Schedule Caste, was one of those ranked. He was appointed as Tutor in the Department of Surgery, thus filling up the recategorised and shifted post. From the counter affidavit of the 1st respondent we notice that the appellant commenced service on provisional basis as Tutor w.e.f. 06.08.1993 till 06.08.1994 and from 09.08.1994 till 11.07.1996. Meanwhile he was advised by the Kerala Public Service Commission and was appointed on regular basis from 12.07.1996 and is continuing in service.

5. After thus being the beneficiary of the recategorisation of the post of Professor, the appellant started representing to upgrade his post to that of Professor, with the obvious intention of occupying the post of Professor,

without working in the intermediary posts. As his representations did not yield any positive response, he filed O.P.No. 27729 of 1998 in this Court, which was disposed of by Ext.P11 judgment directing consideration of his representation. Reading of the judgment would disclose that though his intention was obviously to get himself appointed to the post of Professor (Surgery), his apparent complaint was that there was inadequacy in the representation of teachers from the reserved categories, knowing fully well that a positive response on his complaint will be to his benefit only. Again seeking upgradation of the posts held by him and claiming that the entire service rendered by him is liable to be reckoned for increment and grade promotion, he filed W.P.(C)No. 22347 of 2004 which was disposed of by Ext.P12 judgment directing consideration of his representation dated 05.01.2004. Finally, he received Ext.P15 from the 1st respondent informing that his request cannot be considered. It was stated that by Ext.P6 was an order of recategorisation in view of the non availability of eligible reserved hands for recruitment and hence upgradation of the post of Tutor to that of Professor to give appointment to the appellant does not arise. He was told that as he was recruited and appointed as Tutor he had no right to be appointed against any higher posts. It is challenging Ext.P15 and seeking the reliefs mentioned above, that the writ petition was filed.

6. According to the counter affidavit filed by the 1st respondent, although Ext.P5 indicated the minimum teaching staff requirement, there are only 6 posts of Professors, as it depends on the financial capacity of the government and that the Government had reviewed the representation of SC/ST candidates in the Homoeo Government Medical College as on 01.01.2006 and found that there was no scope for reserving any more posts. It is stated that the reservation of Professor and Assistant Professor and recategorisation of Tutor does not relate to the Department of Surgery alone as these posts were common to all departments. It is

stated that on 29.07.1993, the appellant was appointed on provisional basis along with 5 other in different disciplines and that the appellant has no special claims to the recategorised posts. It is stated that the statement in the writ petition of his having been appointed through only on 12.07.1993 is falls and that until 12.07.1996 he was on provisional service with break and that his regular service commended PSC on 12.07.1996. It is also stated that in the seniority list of tutors in the Surgery Department, the appellant is the 5th and Junior most and that among the teachers belonging to SC/ ST, he is junior to 4 others. According to the 1st respondent, if at all in future, a post of Professor is reserved for SC/ST that may go to the Department of Social and Preventive Medicine, in which the senior most Tutor belonging to the reserved category is working. Appellant has also filed a reply affidavit producing Ext.P16.

7. Having heard either side, according to us, to put it in a nutshell the contention of the appellant is that the post of Professor (Surgery) was reserved for special recruitment from among SC/ ST candidates and that the said post was recategorised for non availability of qualified candidates and it is in that post that he was appointed. Hence he having completed the required period of service to hold the post of Professor, the post held by him should be upgraded to that of Professor and he is liable to be appointed to that post. In the alternative, it is also pleaded that in any event, now that there is a candidate eligible to the appointed as Professor, the reason for recategorisation no longer servives and hence the respondents are liable to restore the post and resort to conduct special recruitment and appoint him as Professor (Surgery). The Learned Single Judge, after considering the contentions of the appellant dismissed the writ petition by the impugned judgment.

8. We have considered the submissions made by the counsel for the appellant and the respondents. Ext.P6 is the order by which one post of

Professor and one post of Assistant Professor reserved for special recruitment were recategorised as Tutor. The order does not refer to any particular discipline to which the posts recategorised belonged, although the petitioner would want us to understand Ext.P6 as referring to the post of Professor in Surgery. Counsel also referred to Ext.P16, which also does not, in our view, land supports to the plea in this respect. In the absence of the discipline of the post of Professor figuring in Ext.P6 or Ext.P16, we are not in a position to agree with the counsel for the appellant that the recategorised post was that of Professor (Surgery). We therefore have to accept the contention in the 1st respondent's counter affidavit that the recategorisation does not relate to Surgery Department alone and was common to all departments.

9. It is true that reservation for SC/ST is a landable policy laid down by the Government and is to be implemented by the appointing authorities. It was on account of the inadequacy in their representation that Special Recruitment was resorted to in public employment to make goods such inadequate representation. Therefore are discernible from Exts.P1 to P5 However, in this case, we do not think that there is any scope for such special recruitment for the reason that in the review as on 01.01.2006, Government have found that there is adequate representation of SC/ ST in the government Homoeo Medical College and that there was no scope to reserving any more posts for these categories, vide paragraph 5 of the counter affidavit.

10. Even otherwise, special recruitment can be resorted to only upto the category of Assistant Professors as is seen from Ext.P3 and the post of Professor is to be filled up in terms with the rules that are applicable and at best, if he is eligible, he can also be a candidate, when he pos is notified for filing up. In such circumstances, there is no factual basis of the contention of the appellant that there is inadequate representation of

SC/ST in the teaching faculty of the Homoeo Medical College and that the post of Professor (Surgery) should be treated as a reserved post to be filled up by special recruitment. We also fail to discern any special right available to the appellant to be appointed to the category of Professor, especially when he is shown to be the junior most among the teachers belonging to SC/ ST category.

11. For the aforesaid reasons, we are in agreement with Learned Single Judge and find no merit in this appeal. This appeal will stand dismissed, without any order as to costs.

P.R.Raman,
Judge.

Antony Dominic,
Judge.